



The Commonwealth of Massachusetts
The Alcoholic Beverages Control Commission

Leveelett Daltonstall Building, Government Center
100 Cambridge Street, Boston, Mass. 02202-0002

William F. Weld
Governor

Argeo Paul Cellucci
Lieutenant Governor

Telephone: (617) 727-3040
Fax: (617) 727-1258

Gloria C. Larson
Secretary

Edward R. Redd
Chairman

ANNUAL REPORT

Fiscal Year 1991

July 1, 1990-June 30, 1991

State Library of Massachusetts
State House, Boston

Edward R. Redd, Chairman
Stuart P. Krusell, Associate Commissioner
Daniel P. Matthews, Associate Commissioner
Peter J. Connelly, Executive Secretary

MR
178.4M3
A35r
FY1991
c.1



The Commonwealth of Massachusetts
The Alcoholic Beverages Control Commission

Lowell Patton Hall Building, Government Center
100 Cambridge Street, Boston, Mass. 02202-0002

William F. Weld
Governor

Telephone: (617) 727-3040
Fax: (617) 727-1258

Gloria C. Larson
Secretary

Argeo Paul Cellucci
Lieutenant Governor


Edward R. Redd
Chairman

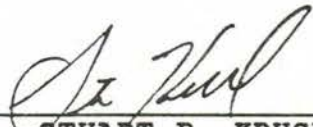
MR
178.4m3
A35r
FY1991
c-1

MEMORANDUM

TO: Secretary Gloria C. Larson
FROM: Edward R. Redd
SUBJECT: Annual Report

Herewith delivered is the Alcoholic Beverages Control Commission's Annual Report for the Fiscal Year ending June 30, 1991.


EDWARD R. REDD
Chairman


STUART P. KRUSELL
Associate Commissioner


DANIEL P. MATTHEWS
Associate Commissioner

ABCC DUTIES AND FUNCTIONS

In accordance with the provisions of Massachusetts General Laws, Chapter 6, Section 44, the Alcoholic Beverages Control Commission files herewith the report of its action and of the conduct and condition of traffic in alcoholic beverages in the Commonwealth for the Fiscal Year ending June 30, 1991.

The Alcoholic Beverages Control Commission (hereinafter referred to as the Commission or ABCC) was created in 1933 by M.G.L. C.6, s43. The Commission has the general supervision of the conduct of the business of manufacturing, importing, exporting, storing, transporting and selling alcoholic beverages. Further, it supervises the quality, purity and alcoholic content thereof by virtue of M.G.L. C.6, s44. The Commission is comprised of a Chairman and two Associate Commissioners. The present Chairman is Edward R. Redd and the Associate Commissioners are Stuart P. Krusell and Daniel P. Matthews.

The Commission sets policy and standards and advises local Licensing Authorities; the Commission sits as a quasi-judicial body, hearing appeals from local boards, protests and violations of the Liquor Control Act (Chapter 138) and conducts public hearings.

The offices of the Commission are located at 100 Cambridge Street, Boston, on the 22nd floor.

THE IMPACT OF BUDGET CUTS

As a new Administration administers direction to the ABCC, it is important to assess the condition of the Commission given the changes it has undergone in the last five years.

Unlike many state agencies, the ABCC is not just now starting to take its share of budget cuts. Its budget has experienced a steady decline to the point where FY '92 appropriations are only 59% of FY 88's, as detailed in the following:

<u>FISCAL YEAR</u>	<u>TOTAL APPROPRIATION</u>
1988	\$1,469,305
1989	\$1,273,169
1990	\$1,122,138
1991	\$1,003,061
1992	\$ 870,703

In order to accommodate these decreases, the Commission has cut its staff approximately one-third (from 36 to 24) over this same time period. As the number of staff continues to decrease, so does the Commission's ability to function in an optimal manner. The result is both a risk of the breakdown of compliance within the industry and a loss of revenue to the Commonwealth.

Administratively as the staff becomes smaller it becomes increasingly more difficult to respond to public and industry inquiries and to keep up with the workload required just to keep the licenses, permits, renewals and applications moving. Thus, there is a diminished ability to ensure that the industry is complying with the requirements of Chapter 138.

For example, many suppliers have not been obtaining the statutorily required Certificates of Compliance. By instituting a simple, yet time consuming procedure, one staff member was able to increase the number in compliance from 812 to 1,217 over a nine month period, resulting in a revenue increase of \$42,400. However, due to the time constraints of normal licensing procedures, we are unable to go after an estimated 350 suppliers not yet in compliance, which translates into at least \$35,000 in revenue lost.

The effects are similar on the investigation side, which has gone from twenty (20) to nine (9) investigators during this time period, with two more departures expected early in FY '92. As the investigative staff decreases, there is a resulting substantial decrease in the number of violation hearings, down from an annual average of 334 during this time period to 171 in FY '91. Again, this translates into a loss in revenue, due to a decrease in the amount of fines in lieu of suspension, from an average of \$226,633 during this time period to \$119,012 in FY '91.

There is the corresponding concern that these staff cuts have resulted in increasing non-compliance within the industry. Over the past five years the number of office complaints has gone from 154 to over 500. There has also been an increase in the number of Chapter 90, Sect. 24J (serving a drunk driver) reports the Commission has not been able to investigate due to the manpower decrease.

The ABCC is clearly at a critical point. Up until now, it has been a net revenue generator for the Commonwealth. At some point this will no longer be true as its ability to generate revenue will be diminished to the point where it will be costing the state money. The greater concern is the ability of this agency to properly regulate a billion dollar industry. The sale and purchase of alcoholic beverages are a significant part of the Massachusetts economy, but it is an industry that carries great risk if it is allowed to operate outside the boundaries put forth in Chapter 138. This ranges from the keeping the industry competitive by maintaining a level playing field to preventing an increase in drunk driving.

Currently, we are just managing to keep the lid on this enforcement role. New policies are being developed to deal with this volatile situation. It should be the goal of the new Administration to correct this decrease in enforcement and revenue and to return the ABCC to its proper role in overseeing the liquor industry.

ADMINISTRATIVE SECTION

The ABCC is the sole issuing authority for alcoholic beverage licenses to manufacturers (distillers, wineries, brewers, farmer breweries, farmer wineries, etc.), wholesalers and importers, rectifiers, railroads, airlines, ships and ship chandlers. It is the sole issuing authority of liquor transportation permits for express or trucking companies, ships, railroads, caterers, airlines and liquor retailers. It licenses salespersons employed by manufacturers, wholesalers and importers.

Massachusetts has a two-tiered system for retail liquor licensing. Each city or town which has voted to permit the sale of alcoholic beverages (only 21 of the state's 351 cities and towns are "dry") has its own Licensing Board, Commission or Licensing Authority. These local boards or commissions are the licensing authorities for hotels, restaurants, clubs, wine auctions and package stores within their communities. While the local licensing authorities do the actual issuing, licenses must be approved by the ABCC.

During Fiscal year 1991, the Commission issued approximately 14,000 permits and licenses. In addition, it processed 12,000 renewals and it approved or disapproved approximately 3,000 applications for new licenses or license changes (transfers of license locations or stock, pledges of licenses or stock, changes of managers or officers, etc.) forwarded from the local licensing authorities.

Each of these involves a review for compliance with statutes and regulations, cross checking with the Department of Revenue for compliance with the tax laws of the Commonwealth and contact with licensees, applicants, their agents and attorneys and the Local Licensing Authorities.

A significant function of the agency is responding to numerous telephone and written inquiries from local licensing boards, government agencies, licensees, attorneys, applicants and the general public concerning the status of applications, procedures for obtaining licenses and appealing decisions, state and local laws and regulations, price posting regulations, public policy and matters of a technical and general nature.

EFFICIENCIES IN ADMINISTRATION

Since 1986, the ABCC has automated many of its functions. This has been made possible by a License Tracking System (LTS) which was programmed and installed by the Office of Management Information Services. Parallel with this effort, data on all retail and state licenses was entered into the LTS. Currently there are 10,000 retail licenses and 10,000 state permits in this data base. This system enables the agency to monitor annual renewals of licenses and permits, track the process of applications pending approval,

develop statistics and paper flow for management purposes and supply cities and towns with data on local licenses.

The LTS results in time savings to both the state and municipalities and to state licensees. In addition, the accuracy of the information has eliminated much confusion and misinformation as to the location and other matters of concern to the public and attorneys.

These system improvements have enabled the reduced staff to not only keep abreast of an increasing workload but also to improve service in the non-automated functions of the agency. Continued enhancements of the system will relieve licensees, municipalities and permit holders of many time consuming tasks demanded by the present license process.

INVESTIGATORY SECTION

Part of the ABCC is an investigatory staff, members of which are designated as "Special Assistants to the Commission". They are charged with ensuring that those involved in the alcoholic beverage industry comply with Massachusetts law and ABCC rules and regulations. To ensure compliance, they investigate complaints and make on-site inspections of licensed premises. Investigators interview license applicants, checking financial, corporate, and any police records. They are required to visit newly-licensed establishments to assure the premises comply with applicable statutes and codes.

Licensed establishments are inspected both after complaints and on routine inspections. When apparent violations are found, a report is submitted to the Commission, a hearing is conducted and the matter is adjudicated. Investigators are required to prepare the evidence and prosecute their cases before the Commission. From time to time, the investigators carry out special orders of the Commission and assist other law enforcement agencies and local licensing authorities.

HEARINGS

During Fiscal Year 1991, the Commission heard 365 cases in its adjudicatory hearings. (See Statistical analysis). Hearings are open to the public and written decisions are rendered. Decisions are kept on file with the Agency and with the Social Law Library at Suffolk County Courthouse in Boston. They are also reported in the Massachusetts Beverage Journal and The Price Book, and other publications distributed to licensees.

STATISTICAL ANALYSIS OF HEARINGS

	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>
Appeals	159	112	110	106	126
Protests	4	5	8	9	9
Reappeals/Reconsideration	4	5	1	2	1
Violations	249	253	298	451	171
Investigatory Hearings	3	5	3	15	29
Remands from Superior Court	1	4	3	0	3
Disputed Liquor Bills	0	1	1	5	2
Tax Protests	8	6	0	0	0
Public Regulatory Hearings	0	1	3	0	1
M.G.L. Ch. 138, Sec. 25E Cases	16	16	9	3	8
Pre-Trial Conferences	17	21	15	18	15
	<hr/>				
TOTALS:	461	429	451	609	365

JUDICIAL PROCEEDINGS

Aggrieved parties have a right to appeal ABCC decisions to Superior Court under the Administrative Procedures Act (MGL Chapter 30A). On appeal, the ABCC is represented by the Attorney General's Government Bureau. Some success has been achieved in expediting the appeal process in the courts, thus reducing the delay between a decision of the Commission and its implementation. A total of 25 Commission decisions were appealed to Superior Court last year. Approximately 90% of appealed cases are ultimately resolved on terms favorable to the Commission.

PUBLIC POLICY

In carrying out its responsibilities, an important function of the ABCC is identifying and implementing policies which protect the safety and interests of consumers and the general public and stabilize the liquor industry in Massachusetts.

The ABCC and its staff have developed and maintained a close working relationship with other governmental units, including the Executive Office of Public Safety, the Registry of Motor Vehicles, Governor's Highway Safety Committee, Department of Revenue, the Attorney General's Office and other law enforcement and administrative agencies. The ABCC advises the Executive and Legislative Branches on matters relating to the liquor industry. The Commission participates in seminars and conferences to bring problems connected with the use and abuse of alcohol to the attention of licensed establishments, their employees and the general public.

The Commission has undertaken a program to invigorate the local licensing authorities by encouraging cities and towns to address their responsibilities in administering and enforcing the liquor laws.

NEW DEVELOPMENTS

Important measures pertaining to the alcoholic beverages industry were signed into law.

Section 316 of Chapter 150 of the Acts of 1990 authorizes year-round Sunday package store openings in certain communities within 10 miles of the New Hampshire border. These cities and towns must be in Middlesex, Worcester and Essex counties. The law requires approval from local licensing authorities, stores may not open before noon and close no later than 11 p.m. (or 11:30 if the following day is a holiday), employees must be paid at a rate not less than one and one half times the employer's regular rate, no employee shall be required to work and refusal to work on a Sunday shall not be grounds for discrimination, dismissal or deduction of hours.

Commercial wine auctions were authorized by Chapter 1 of the Acts of 1991. The law allows local licensing authorities to grant, with the approval of the ABCC, temporary licenses to package stores to conduct commercial wine auctions either at package stores or licensed restaurants. No more than two temporary licenses may be granted to the same licensee in a calendar year.

TAX REVENUES

Since 1976, the ABCC has cooperated with the Massachusetts Department of Revenue in assisting in the collection of overdue taxes from licensees who attempt to transfer their licenses or interest in their businesses. Prior to approving such transfers, the Commission requires proof of tax compliance. The tax dollars collected under this program for the last five years are as follows:

Period Ending:

June 30, 1987.....	\$1,593,980.83
June 30, 1988.....	\$1,442,560.16
June 30, 1989.....	\$1,242,202.66
June 30, 1990.....	\$ 755,988.18
June 30, 1991.....	\$1,058,828.51
TOTAL:	\$6,093,560.34

FINES

Under the provisions of M.G.L. c 138, s23, when the ABCC suspends a license, the Commissioners at their discretion, may accept a fine in lieu of such suspension. The monies thus collected by the Commission are paid directly to the Treasurer and Receiver General.

The amount for the last five years is as follows:

Period Ending:

June 30, 1987.....	\$131,624.65
June 30, 1988.....	\$282,427.97
June 30, 1989.....	\$148,642.00
June 30, 1990.....	\$248,830.00
June 30, 1991.....	\$119,012.00
TOTAL:	\$930,536.62

FINANCIAL STATEMENT

Fiscal Year--July 1, 1990 Ending June 30, 1991

	Number of Permits Licenses/Fees Issued	Amount
Fines in Lieu of Suspension	N/A	\$119,012
Manufacturer's License--Wineries	16	686
Manufacturer's License--Breweries	3	135,000
Wholesaler's & Importer's All-Alcoholic	50	297,000
Wholesaler's & Importer's Wines & Malt	41	123,000
Wholesaler's & Importer's Sacramental	3	7,000
Certificate of Compliance (\$500)	245	122,500
Certificate of Compliance (\$100)	825	82,490
Special Permits	109	1,817
Commercial Alcohol License	3	1,500
Agents, Brokers & Solicitors	61	122,000
Filing Fees	2,050	102,500
Storage Permit	16	3,200
Storage Permit (Annual)	6	6,000
Storage Permit (Bonded Warehouse)	2	800
Salesmen's Permit	1,648	82,400
Transportation Permit--Licensee	3,133	93,995
Transportation Permit--Railroad	0	0
Transportation Permit--Airline	1	600
Transportation Permit--Steamship	0	0
Railroad License--Master	4	800
Railroad License	59	4,550
Airline License	277	6,925
Steamship License	83	24,900
Express Master	77	3,850
Express Permit	2,747	82,410
Ship Chandler's License	6	3,000
Miscellaneous Income	N/A	990
	<hr/> 11,477	<hr/> \$1,308,900*

*This amount was transferred into the General Fund of the Commonwealth.

STATEMENT OF APPROPRIATIONS AND EXPENDITURES

APPROPRIATIONS:

Personnel Services	\$915,586*
Expenses	87,475
TOTAL:	<hr/> \$1,003,061

EXPENDITURES:

Personnel Services	\$914,344*
Expenses	86,020
TOTAL:	<hr/> \$1,000,364

BALANCE UNEXPENDED:

Returned to Treasurer and Receiver General:	<hr/> \$2,697
--	---------------

*Includes \$42,254 for Unit 5 retroactive pay raise.